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HOUSE BILL 820

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO PROPERTY; ENACTING THE PRIVATE PROPERTY PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Private Property Protection Act".

Section 2. DEFINITIONS. -- As used in the Private Property Protection Act:

A. "government unit" means a political subdivision of the state, including a board, commission, council, or combination thereof, or department or agency in the executive branch of government;

B. "market value" means the price a buyer would pay a seller after considering all factors in the marketplace that influence the price of private property;

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1 C. "nonregulatory act" includes closure of a
2 military base or government facility;

3 D. "owner" means a person or other legal entity
4 created for the purpose of holding legal or equitable title to
5 property for all its beneficial uses available at the time of
6 acquisition and for the value of its future disposition;

7 E. "private property" means an interest in
8 property as recognized by common law, including land, ground
9 water or surface water rights of any kind that are not owned
10 by the federal government, the state or a political
11 subdivision; and

12 F. "regulatory program" means an action of a
13 government unit that affects an owner's private property in
14 whole or in part, temporarily or permanently, in a manner that
15 restricts or limits the owner's vested rights in property that
16 would otherwise exist in the absence of the government action.

17 Section 3. INVERSE CONDEMNATION. --

18 A. Whenever implementation by the state or any of
19 its political subdivisions of any regulatory program operates
20 to reduce the fair market value of real property by twenty-
21 five percent for the uses permitted at the time the owner
22 acquired a title interest and right of property, or the date
23 immediately preceding the effective date of the regulatory
24 program, whichever is later, the property shall be deemed to
25 have been taken for the use of the public. As used in this

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1 section, regulatory programs include land-use planning or
2 zoning programs.

3 B. The owner of real property described in
4 Subsection A of this section shall have the right to either
5 require condemnation by and just compensation from the
6 governmental unit, or units, when more than one governmental
7 unit is involved, imposing the rule resulting in decreased
8 value, or to receive compensation for the reduction in value
9 caused by government action, and in either case to have the
10 compensation determined by a jury. When more than one
11 governmental unit is involved, the court shall determine the
12 proportion each unit shall be required to contribute to the
13 compensation and fix a settlement date not to exceed thirty
14 days.

15 C. The compensation for real property taken shall
16 be for the full value of the interest taken or for the full
17 amount of the decrease in fair market value and compensation
18 shall not be limited to the amount by which the decrease in
19 fair market value exceeds twenty-five percent of value as
20 calculated pursuant to Subsection A of this section. The
21 market value shall be established by fully accredited
22 commercial appraisers.

23 D. Governmental units subject to the provisions of
24 the Private Property Protection Act shall not make waiver of
25 the provisions of that act a condition for approval of the use

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1 of real property or the issuance of any permit or other
2 entitlement. An owner of real property may accept an approval
3 of use, permit or other entitlement granted by a governmental
4 unit without compromising rights under the Private Property
5 Protection Act if:

6 (1) a written reservation of rights is made
7 at the time of acceptance of the authorization, permit or
8 other entitlement; or

9 (2) an oral statement reserving rights is
10 made before the governmental unit granting the authorization,
11 permit or other entitlement at a public meeting at which the
12 governmental unit renders its decision.

13 E. A twenty-five percent reduction in market value
14 shall be determined by comparing the market value of the
15 property when the regulatory program is in effect to the
16 market value when the program is not in effect.

17 Section 4. EXCEPTIONS. --No compensation shall be
18 required pursuant to the Private Property Protection Act if
19 the governmental action:

20 A. is a nonregulatory act that results in a
21 diminution of the value of the property but does not otherwise
22 destroy, damage, trespass upon or take the property or
23 prohibit any rightful use of the property;

24 B. prohibits uses of the property that are
25 injurious or potentially injurious to the public health and

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1 safety or is a public nuisance, as defined by common law,
2 statute, regulation or rule but shall not include unproven,
3 potentially injurious uses for which compensation is required
4 under the Private Property Protection Act; or

5 C. produces benefits to the owner equivalent to or
6 greater than any loss to the owner as determined by the fair
7 market value of the property before and after the action.

8 Section 5. STATUTE OF LIMITATIONS. --

9 A. The statute of limitations for actions brought
10 pursuant to the Private Property Protection Act is the statute
11 of limitations for ordinary actions brought for injuries to
12 real property, except that the time begins to run upon the
13 final administrative decision implementing the regulatory
14 program affecting the owner's property.

15 B. A program is implemented with respect to an
16 owner's real property when actually applied to that property
17 unless the enactment of the program by itself operates to
18 reduce the fair market value of the property, or any legally
19 recognized interest therein, to less than seventy-five percent
20 of its fair market value for the uses permitted at the time
21 the owner acquired a title interest, in which case the date of
22 enactment is the date of implementation.

23 Section 6. ENFORCEMENT. --

24 A. The Private Property Protection Act shall be
25 enforced through an inverse condemnation suit at law brought

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1 by, and at, the sole discretion of the owner. All enforcement
2 costs, including attorney fees, shall be borne by the
3 governmental unit responsible for the regulatory act, except
4 that an owner who does not prevail in a final action for
5 compensation shall bear his own enforcement costs and a pro-
6 rata share of any court costs, and an owner who does not
7 prevail in an action for an increase in a previously
8 adjudicated compensation award shall bear the like costs in
9 the same proportion for subsequent actions.

10 B. A governmental unit subject to an award of
11 compensation under the Private Property Protection Act shall,
12 within the thirty-day period set by the court, pay to the
13 owner the awarded compensation.

14 C. Alternatively, the governmental unit against
15 which inverse condemnation is successfully required under
16 Section 3 of the Private Property Protection Act may, within
17 the thirty days set by the court, rescind the land use
18 planning, zoning or other as it affects the owner's land and
19 all similarly situated land in the jurisdiction in which the
20 regulatory program is in effect, without further public
21 hearings, proceedings or environmental review. If the
22 governmental unit elects to rescind the affected regulatory
23 program, the program that was in effect previously shall
24 automatically be in effect. In that event, the governmental
25 unit shall be liable to the landowner for the reasonable and

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1 necessary costs of the inverse condemnation action, plus any
2 actual and demonstratable economic losses caused him by the
3 regulation during the period in which that program was in
4 effect.

5 D. This section shall not be deemed to affect any
6 remedy that is constitutionally required.

7 E. Any permit, authorization or other entitlement
8 granted under a program rolled back pursuant to this section
9 shall, at the owner's discretion, continue to be valid,
10 notwithstanding any provision of law in the program reinstated
11 by the rollback.

12 Section 7. LEGAL CHALLENGES.--Nothing in the Private
13 Property Protection Act precludes property owners of real
14 property from bringing legal challenges to regulatory programs
15 affected by that act in instances where the regulatory program
16 caused diminution in value of the property or its use does not
17 exceed twenty-five percent of fair market value for the uses
18 permitted at the time the owner acquired title interest, and
19 it shall not preclude property owners from bringing legal
20 challenges to regulatory programs affected by that act based
21 on other provisions of law.

22 Section 8. PROPERTY TAX ADJUSTMENT.--After the state or
23 any of its political subdivisions enacts a regulatory program
24 in a way that reduces the fair market value of a taxpayer's
25 property, the county assessor shall adjust the value of the

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property for taxation purposes to reflect that decrease.